IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.4195 of 2006
To
FIRST APPEAL No.4202 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER & ANR. - Appellants
Versus
HEIRS OF DECD.PATEL AMBARAM SHIVABHAI,RAMABHAI AMBARAM & ORS. - Respondents

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Appearance :
MR SS SHAH for GP Appellants in First Appeal Nos.4195 TO 4198 OF 2006
AND
MRS KRINA P CALLA, AGP for First Appeal Nos.4199 TO 4202 of 2006
MR AJ PATEL for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

Date : 02/04/2007

ORAL JUDGMENT

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894

("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated August 9, 2002 rendered by the learned Extra Assistant Judge, Mehsana, in Land Acquisition Reference Nos.251, 252 and 254 to 259 of 1999 by which the claimants have been awarded additional amount of compensation at the rate of Rs.58.77 Paise per square metre for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.4.23 Paise per square metre by his award dated March 31, 1998.

2. The Executive Engineer, Narmada Project (Construction), Division No.22, Kadi, made a proposal to the State Government to acquire agricultural lands of Village: Laxmipura, Taluka: Kadi, District: Mehsana, for the public purpose of construction of Canal under Narmada Project. On perusal of the said proposal, the Government was satisfied that the lands of Village Laxmipura mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act

was issued, which was published in the official gazette on July 20, 1995. Thereafter, necessary inquiry under Section 5 of the Act was made and a report, as contemplated by Section 5-A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report, the State Government was satisfied that the lands of Village: Laxmipura specified in the notification published under Section 4 of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on April 3, 1996. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.100/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 31, 1998, offered compensation to the claimants at the rate of Rs.4.23 Paise per square metre. The claimants were of the opinion that the offer of

compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer to their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Mehsana, where they were numbered as Land Acquisition Reference Nos.251/1999, 252/1999 and 254 to 259 of 1999.

3. On behalf of the claimants, witness Nandkishore Khodidas Patel was examined at Exhibit 16. The witness claimed that the lands acquired were irrigated lands and that each claimant was able to grow three different crops in a year. According to the said witness, each claimant was able to raise crops of cumin-seed, cotton, tomato, wheat, millet, etc. and was earning net income of Rs.40,000/- to Rs.50,000/- per year per *vigha* from the sale of agricultural produces. The witness stated that Village: Laxmipura from which the lands were acquired was fully developed and that boundaries of Village:

Adundara and Village: Kadi were adjoining to the boundaries of Village: Laxmipura. The witness mentioned before the Court that the lands of Village: Kadi were acquired for the public purpose of construction of a canal under Narmada Project and that in L.A.R.Nos.1136 to 1148 of 1998, the Reference Court had awarded compensation at the rate of Rs.63/- per square metre. The witness produced a copy of the award rendered by the Reference Court in L.A.R.Nos.1136 to 1148 of 1998 at Exhibit 15 and claimed that the claimants in the instant cases should be awarded enhanced compensation on the basis of the said previous award. It was also claimed by the witness that the lands of Village: Adundara were also acquired for the public purpose of construction of Narmada Canal and that the Reference Court had awarded compensation to the claimants at the Rs.50/- per square metre by judgment dated December 29, 2001 rendered in L.A.R.Nos.119 to 128 of 1999. The witness produced a copy of the award of the Reference Court rendered in L.A.R.Nos.119 to 128 of 1999 at Exhibit 14 and mentioned that the claimants were also entitled to enhanced compensation on the basis of the

said award.

Though this witness was cross-examined by the learned counsel for the acquiring bodies, the assertion made by the witness that boundaries of Village: Adundara, Village: Kadi and Village: Laxmipura were common, could not be demonstrated to be untrue.

4. On behalf of the acquiring authorities, Mr.Kantilal Madhavlal Patel, who was then discharging duties as Deputy Mamlatdar in the office of Special Land Acquisition Officer, Narmada Project, was examined at Exhibit 18. According to this witness, no documentary evidence was brought on record by the claimants before the Special Land Acquisition Officer in support of their claim for enhanced compensation and, therefore, the award of the Special Land Acquisition Officer, which was based on relevant factors, should be upheld by the Court. However, in cross-examination, the witness had to admit that he was not associated with the proceedings initiated for acquiring the lands from Village: Laxmipura nor he

had seen the lands acquired. The witness further admitted that he was deposing before the Court on the basis of official record available with him.

5. Yet another witness, i.e. Mr.Virendra Vasantlal Shah, who was then discharging duties as Deputy Executive Engineer in the office of Narmada Naher Project, was examined at Exhibit 23. The witness mentioned that the main occupation of the residents of Village: Laxmipura was agriculture and that the village was not developed at all. However, in cross-examination, the witness stated that he was not aware as to which crops were being grown by the claimants on their lands, which were acquired. The witness also stated that the canal was passing through Village: Kadi, from which it was passing through Village: Laxmipura and thereafter, was proceeding towards Village: Adundara. The witness also mentioned that the boundaries of Village: Kadi, Village: Adundra and Village: Laxmipura were common and adjoining to each other.

6. On appreciation of the evidence adduced by

the parties, the Reference Court was of the opinion that post notification award of the Reference Court relating to the lands of Village: Adundara, which was produced at Exhibit 14, as well as previous award of the Reference Court relating to the lands of Village: Kadi, which was produced at Exhibit 15, were relevant pieces of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant cases. Placing reliance on those two previous awards, the Reference Court has awarded additional amount of compensation at the rate of Rs.58.77 paise per square metre by the impugned award giving rise to the above numbered appeals.

7. This Court has heard Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.A.J.Patel, learned counsel for the original claimant(s) in each appeal, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is true that the claimants could not make their claim good that each claimant was earning Rs.40,000 to Rs.50,000/- per year per *vigha* from the sale of agricultural produces. However, the said fact pales into insignificance in view of the fact that enhanced compensation was never claimed by the claimants on the yield basis. The record does not indicate that the claimants had claimed enhanced compensation on the basis of comparable sale instances. They have relied upon the post-notification awards relating to the lands of Village: Kadi and Village: Adundara. The post notification award of the Reference Court relating to the lands of Village: Adundara was produced at Exhibit 14. A bare perusal of the same indicates that pursuant to the notification issued under Section 4(1) of the Act, which was published in the official gazette on August 9, 1995, the lands of Village: Adundara were acquired for public purpose of construction of canal under Narmada Project. Therein the Special Land Acquisition Officer by his award dated March 24, 1998 had offered compensation to the claimant at the Rs.4.50 Paise per

square metre for their irrigated lands and Rs.3/- per square metre for non-irrigated lands. The claimants were dissatisfied with the offer of compensation made by the Special Land Acquisition Officer and, therefore, they had sought references. Accordingly, the references were made to the District Court, Mehsana, where they were registered as L.A.R.Nos.119 to 128 of 1999. In those cases, on behalf of the claimants, witness Anwarbhai Akbarbhai Malik was examined at Exhibit 20 whereas on behalf of the Acquiring Authorities, witness Jagdishbhai Chhotalal Ramol was examined at Exhibit 23. On the basis of appreciation of the evidence adduced by the parties, the Reference Court by judgment and award dated December 29, 2001 awarded additional amount of compensation to the claimants at the rate of Rs.50/- per square metre.

9. Again perusal of Exhibit 15, which is post notification award of the Reference Court relating to the lands of Village: Kadi, indicates that the lands of Village: Kadi were acquired for the public purpose of construction of canal under Narmada Project

pursuant to the notification issued under Section 4(1) of the Act, which was published in the official gazette on September 6, 1995. Therein the Special Land Acquisition Officer by his award dated January 20, 1998 had offered compensation to the claimants at the rate of Rs.6/- per square metre. Feeling aggrieved by the said offer, the claimants had sought references. Accordingly, the references were made to the District Court, Mehsana, where they were numbered as L.A.R. Case No.1136 to 1148 of 1998. In those cases, on behalf of the claimants, witness Maheshbhai Bechardas Patel was examined at Exhibit 14 whereas on behalf of the Acquiring Authorities, witness Virendrakumar Vasantlal Shah was examined at Exhibit 17. On appreciation of the evidence adduced by the parties, the Reference Court by judgment and award dated December 29, 2001 awarded to the claimants additional amount of compensation at the rate of Rs.57/- per square metre over and above the amount of compensation, which was already awarded to them by the Special Land Acquisition Officer. The evidence on record indicates that Village: Kadi is fully developed town wherein several industries are

established and, therefore, this Court is of the opinion that the award of the Reference Court relating to the lands of Village: Kadi should not be made basis for the purpose of determining the market value of the lands acquired from Village: Laxmipura.

10. On the facts and in the circumstances of the case, this Court is of the opinion that post notification award of the Reference Court relating to the lands of Village: Adundara would furnish better guidance for the purpose of determining the market value of the lands acquired in the instant case. During the course of hearing of these appeals, the learned Assistant Government Pleader has produced a simple copy of judgment dated March 23, 2005 rendered by the High Court in First Appeal Nos.2002 to 2008 of 2004 for perusal of the Court. It indicates that the common judgment and award of the Reference Court rendered on December 29, 2001 in L.A.R.Nos.119 to 128 of 1999 was subjected to challenge in First Appeal Nos.2002 to 2008 of 2004 and the Division Bench of the High Court had modified the said award by judgment dated March 23, 2005 holding that the

claimants were entitled to compensation at the rate of Rs.39.65 Paise per square metre. The post-notification award of the Reference Court relating to the lands of village Adundara, which has attained finality can be taken into consideration as a good guidance for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village, i.e. Village Laxmipura, as it is established that there was no rise in the price of the lands of village Laxmipura after publication of notification dated August 9, 1995 for acquiring the lands of Village Adundara. As observed earlier, the relevance of post notification award of the Reference Court relating to the lands of Village: Adundara stands satisfactorily established through the testimony of witness Nandkishore Khodidas Patel, who was examined at Exhibit 16. It may be mentioned that for the purpose of acquiring lands of Village: Adundara, notification under Section 4 of the Act was issued on August 9, 1995 whereas in the instant cases, notification under Section 4(1) of the Act was published in the official gazette on July 20, 1995. There is a general consensus between the learned

counsels for the parties that on the basis of post notification award of the Reference Court relating to the lands of Village: Adundara produced at Exhibit 14, as modified by the High Court vide judgment dated March 23, 2005 rendered in First Appeal Nos.2002 to 2008 of 2004, the claimants, in all, would be entitled to compensation at the rate of Rs.40/- per square metre. Therefore, the appeals deserve to be accepted in part.

11. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated August 9, 2002 rendered by the learned Extra Assistant Judge, Mehsana, in L.A.R.Nos.251 of 1999, 252 of 1999 and 254 of 1999 to 259 of 1999 awarding additional amount of compensation to the claimants at the rate of Rs.58.77 paise per square metre over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.4.23 Paise per square metre by his award dated March 31, 1998, is hereby modified and it is held that the claimants, in all, would be entitled to compensation at the rate of Rs.40/- per square metre for their acquired lands.

Other benefits, which have been conferred on the claimants by the impugned award, are not interfered with and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

Rajendra